GT GreenbergTraurig

Mitchell F. Brecher
(202) 331-3152
BrecherM@gtlaw.com

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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 11-42 - Lifeline and Link Up Reform and Modernization
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

This letter is submitted on behalf of TracFone Wireless, Inc. ("TracFone") in response to an ex parte letter submitted by the Link Up for America Coalition ("Coalition") dated January 20, 2012, summarizing a meeting held with Christine D. Kurth, Policy Director and Wireline Counsel to Commissioner McDowell. In the letter and during the meeting, the Coalition made several irrelevant and unsupported statements regarding the relative abilities of the Coalition's members and Lifeline-only wireless Eligible Telecommunications Carriers ("ETCs"), and in particular, TracFone, to reach eligible low-income consumers.[1] The Coalition's statements about TracFone, in addition to being inaccurate, have no bearing on whether its members or any ETC should receive Link Up subsidies -- subsidies which are paid for by the nation's consumers of telecommunications services, and which could be used for better purposes such as to increase the number of low-income households who receive Lifeline support and to fund pilot programs to deliver affordable broadband service to low-income households. Moreover, in attempting to mischaracterize TracFone as an ETC that does not reach low-income communities (a mischaracterization that is belied by the overwhelming success of TracFone's Lifeline service), the Coalition once again demonstrates its misunderstanding of TracFone's Lifeline service, as well as the legal requirements governing Lifeline service. The Coalition also continues to assert that its members should receive millions of dollars in Link Up support from the federal Universal Service Fund ("USF") to subsidize normal costs of doing business such as the administrative costs for customer support and office support services. TracFone responds to several of the statements in the Coalition's latest ex parte letter, including assertions specifically directed to TracFone.

The Coalition claims, without providing any valid basis, that ETCs receiving Lifeline and Link-Up support are able to reach deeper into low-income communities than those which it describes as "Lifeline-only ETCs." The Coalition asserts that its members reach more of the low-income market than the Lifeline-only carriers by using a community-based business model and by "remov[ing] the barrier presented by activation fees needed to recover higher costs

[1] The Coalition's assertion that TracFone is a Lifeline-only provider is unsupported and unsupportable. TracFone has approximately 19 million customers, of which about 3.5 million are SafeLink Wireless® customers.

experienced by smaller wireless ETCs including Coalition members." This assertion is a prime example of the Coalition's circular reasoning. The Coalition asserts that its members are able to reach more low-income consumers because they remove activation fees (by relying on Link Up support). However, the Coalition fails to acknowledge that its members themselves erect the activation fee barrier by charging such fees. While the Coalition claims that its members have higher costs that need to be recovered through Link Up support, the Coalition overlooks the fact that Link Up funding is not available to offset any charge which an ETC deems to be "customary." In order to qualify for Link Up reimbursement, the charge must not only be customarily imposed on all customers (not just Lifeline customers), it must be for the specific purpose of providing "a single connection at a consumer's principal place of residence."[2] As TracFone has explained in previous comments and other filings with this Commission, which it will not repeat here, subsidies to offset marketing and advertising, regulatory compliance and other general and administrative costs are not charges customarily imposed to provide a single connection at a consumer's principal place of residence. For that reason, as well as for others identified in prior TracFone submissions, wireless ETCs should not be allowed to receive any Link Up support.[3]

The Coalition also continues its attempt to show that Lifeline-only ETCs do not reach most eligible low-income consumers. Moreover, the Coalition makes baseless conclusions about the low-income consumers who do receive Lifeline service and the relative success of the marketing efforts employed by ETCs. The Coalition's arguments are completely irrelevant to whether its members are entitled to receive Link Up support and, more importantly, whether continuing to have the USF provide "free money" to the Coalition members' shareholders serves any public interest benefit or would advance any goal of universal service. Nevertheless, TracFone feels compelled to correct the Coalition's mistaken assertions.

The Coalition states that TracFone's penetration rate tops out at about 20 percent and that the vast majority of the eligible low-income market is unaware of Lifeline service. While TracFone does not know the source of the data upon which the Coalition relies for its conclusions about the percentage of Lifeline-eligible households that receive Lifeline service from TracFone, a review of data posted on the Universal Service Administrative Company ("USAC") website (www.universalservice.org), indicates that TracFone is the largest or the second largest Lifeline service provider (close behind Virgin Mobile, another Lifeline-only ETC) in each of the states that Coalition references in its letter. Furthermore, USAC data for 2010 show that two of the states (*i.e.*, Georgia and North Carolina) which the Coalition references have a Lifeline participation rate above 50 percent. Each of those states had a Lifeline participation rate of 50 percent or less in 2009. None of the Coalition members received any Lifeline support until 2011. Therefore, contrary to the Coalition's unsupported and erroneous claims, the entrance of TracFone and other Lifeline-only ETC providers has substantially increased the Lifeline participation rate.

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[2] 47 C.F.R. § 54.411(a)(1).

[3] *See e.g,* Additional Comments on Specified Issues, filed by TracFone in *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, August 26, 2011.

The Coalition also claims that data it provided shows the following: "TracFone's business model is successful at rapidly bringing Lifeline-supported service to about 20 percent of the low-income households in a market, it does not reach the remaining 80 percent (who are typically less affluent relative to those who are able to enroll in TracFone's services by phone or the Internet)." There are numerous flaws in the Coalition's position. First, contrary the Coalition's claims, TracFone uses every possible marketing channel to reach low-income customers, including in-person outreach and participating in local events. However, TracFone, unlike some of the Coalition's members, does not hand out phones without ensuring that the recipients are fully qualified to receive Lifeline service.

Second, the Coalition overlooks the fact TracFone has implemented a 60 day non-usage policy under which TracFone terminates Lifeline benefits to those Lifeline consumers who do not use TracFone's Lifeline service for more than 60 days. This non-usage policy was developed in consultation with several state commissions and has been implemented by TracFone in every state where it operates as an ETC. That non-usage policy (which the Commission has proposed in this proceeding to be required of all ETCs) has been invaluable to TracFone's success in reducing waste, fraud and abuse of USF resources. TracFone's current Lifeline penetration rate reflects the thousands of customers whose Lifeline benefits are terminated for non-usage.

In addition, as a condition of forbearance, TracFone must verify the continued eligibility of each Lifeline customer on an annual basis. TracFone has proposed in this proceeding that all ETCs (including, of course, Coalition members) be required to verify annually that all Lifeline customers remain Lifeline-eligible. As a result of complying with the non-usage policy and the annual verification requirement, TracFone de-enrolls a significant percentage of its Lifeline customers each month. Even assuming that the Coalition's unsupported data are correct, the fact that TracFone's Lifeline penetration remains at 20 percent indicates that although TracFone loses customers each month, it also gains new customers. Moreover, the actual individuals comprising the 20 percent of low-income consumers who receive TracFone's Lifeline service at any given time do not remain the same. In fact, each year TracFone de-enrolls 50 percent of its customers through the non-usage policy and the annual verification process, both of which are not required for the Coalition's members. For example, in Florida TracFone has enrolled 986,036 Lifeline customers and de-enrolled 541,752 Lifeline customers during the past three years, so 55 percent of TracFone's Lifeline customers have been de-enrolled. The Coalition wrongly alleges that TracFone is not reaching 80 percent of low-income customers. Many of those "unreached" consumers may actually receive Lifeline service from TracFone or may have received Lifeline service but have been de-enrolled either through the non-usage policy or the annual verification process. Both the non-usage policy and the annual verification process have been instrumental in TracFone's success in reducing waste, fraud and abuse of USF resources. Indeed, if the Coalition is truly concerned about waste, fraud and abuse of USF resources its members should immediately implement non-usage policies and annual verification processes.

In addition to being wrong that TracFone's Lifeline service only reaches 20 percent of low-income consumers, the Coalition makes the perplexing statement that the 80 percent of low-income consumers (to whom TracFone presumably has never provided Lifeline service) "are typically less affluent relative to those who are able to enroll in TracFone's services by phone or the Internet." As TracFone has stated before, the very concept of "affluent" Lifeline customers is itself oxymoronic. Lifeline support is available only to low-income households that qualify for Lifeline based on having income at or below 135 percent of the Federal Poverty Guidelines or based on participation in low-income assistance programs. There are no "affluent" Lifeline customers. None of TracFone's or any other ETC's Lifeline customers are affluent, or even relatively affluent.[4]

The Coalition makes other statements that warrant a response. The Coalition does not want the Commission's grant of forbearance from the facilities requirement for ETCs to render an ETC ineligible to receive Link Up subsidies. Carriers that have received such forbearance from the Commission are not permitted to receive Link Up support. The Coalition members should be treated the same. If those carriers have not demonstrated that they provide USF-supported services (as recently redefined by the Commission) using their own facilities or a combination of their own facilities and resale of other carriers' facilities, they may not be designated as an ETC in any state unless and until the Commission has granted such ETCs forbearance from 47 U.S.C. § 214(e)(1)(A) and from 47 C.F.R. § 54.201(i).[5]

The Coalition also continues to assert that its members' customary charges "are based on real and substantial cost such as administrative costs for account and phone setup and customer initial order fulfillment, new customer activation and provisioning, and initial setup for customer support and office support services." Interestingly, the Coalition does not list outreach costs (*i.e.*, marketing and advertising costs) as costs to be recovered in customary charges, as it has in prior filings.[6] This raises the question of whether the Coalition is now intending that the same amount of Link Up support that it claimed was necessary for outreach plus other costs is now necessary for only the other costs it lists in its January 20 letter. Again, the Coalition overlooks the legal requirements for Link Up support. The costs alleged by the Coalition to be recovered by customary charges are not eligible for Link Up reimbursement because they are not costs that the Link Up program was designed to cover. Rather, they are costs of doing business which should be borne by those ETCs desiring to participate in Lifeline, not by the USF. As stated in 47 C.F.R. § 54.411, Link Up support may only be used to reimburse ETCs for the costs of connecting the customer to the network so that service may be commenced, not for ordinary business expenses -- expenses which most carriers incur as a cost of doing business without asking for subsidization from contributors to the federal USF. Furthermore, the fact that a charge to consumers is based on real and substantial costs does not qualify that charge as a customary charge that can be recovered through Link Up support. As TracFone has stated in numerous submissions, if a charge is not routinely paid by Lifeline and non-Lifeline customers then it is not a customary charge. Moreover, if an ETC decides to waive or otherwise reduce

[4] *See* Notice of Ex Parte Presentation of TracFone Wireless, Inc., WC Docket No. 11-42, September 20, 2011.

[5] Connect America Fund, *Order on Reconsideration*, Docket No. WC 10-90, et al., FCC 11-189 (December 23, 2011).

[6] *See* Notice of Oral Ex Parte Presentation of Link Up for America Coalition, WC Docket No. 11-42, December 15, 2011.

such charges, that does not mean that it should have the nation's telecommunications carriers and ultimately all consumers subsidize those waived charges.

Recognizing that as a result of the Commission's re-definition of voice telephony services entitled to USF support, most of its members' will no longer be qualified for ETC designation absent forbearance, the Coalition introduces a new argument: that carriers subject to forbearance should be allowed to receive Link Up support. Throughout this proceeding, TracFone has said repeatedly that no wireless ETCs should receive Link Up, and that Link Up support is not necessary for an ETC committed to a successful Lifeline program enrolling large numbers of Lifeline customers. Indeed, TracFone today has more than 3.5 million Lifeline customers and has enrolled more than 5 million customers since commencing Lifeline service in 2008 (counting those customers who have been de-enrolled pursuant to the 60 day non-usage policy and the annual verification procedure). It has done so without asking for or receiving a single dime of Link Up subsidy. However, if the Commission were to agree with the Coalition that such ETCs should receive Link Up, then TracFone would have no less right to receive Link Up funding than any other ETC. Given the competitiveness of the market, it would have no choice but to seek Link Up support if it were available. TracFone further notes that the issues discussed in this letter, such as the availability of Link Up support and forbearance conditions applicable to carriers that do not have their own facilities, would be resolved if the Commission applied the same rules regarding Lifeline and Link Up to all ETCs.

For the reasons stated herein, as well as those in prior filings, TracFone again urges the Commission to eliminate the Link Up gravy train for wireless ETCs, especially those that do not incur customary charges to offset network connection costs. Nothing would do more to eliminate waste, fraud and abuse of USF resources than to eliminate Link Up, especially for wireless ETCs.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,

Mitchell F. Brecher

cc: Mr. Zachary Katz
Mr. Michael Steffen
Ms. Christine Kurth
Ms. Angela Kronenberg
Ms. Sharon Gillett
Mr. Trent Harkrader
Ms. Kimberly Scardino
Mr. Jonathan Lechter
Ms. Jamie Susskind